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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/540,731	03/31/2000	Hans Eberle	1004-4254	1939

22120 7590 11/09/2005

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EXAMINER

NGUYEN, PHUOC H

ART UNIT PAPER NUMBER

2143

DATE MAILED: 11/09/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<p align="center">Advisory Action Before the Filing of an Appeal Brief</p>	Application No. 09/540,731	Applicant(s) EBERLE ET AL.	
	Examiner Phuoc H. Nguyen	Art Unit 2143	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 07 October 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
 b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
 (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
 (b) ☐ They raise the issue of new matter (see NOTE below);
 (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).


4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
 5. ☐ Applicant's reply has overcome the following rejection(s): _____.
 6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
 7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
 The status of the claim(s) is (or will be) as follows:
 Claim(s) allowed: 7, 28 and 29.
 Claim(s) objected to: 6, 20, 21, 25 and 26.
 Claim(s) rejected: 1-5, 8-19, 22-24, 27 and 30-37.
 Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
 9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
 10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Below.
 12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____
 13. ☐ Other: _____.


 TIMOTHY P. SMITH
 ATTORNEY FOR APPLICANT

In response to the last Office action, the applicant argues in pages 2 first paragraph for claims 1-37 under 35 U.S.C. 112 second paragraph that the term "can be" or "can" is not a relative term which renders the claim indefinite. To support this indefinite terminology, the applicant respectfully points the Examiner to at least a portion of specification beginning at page 31 line 16 which provides a standard for determining the scope of the claim. The examiner totally but respectfully disagrees with the applicant because the pointed portion of specification does not clearly define the conditions of the term "can be" or "can". Eventhough, the term "can be" or "can" is clearly disclosed in the specification with conditions, but these conditions for term "can be" or "can" are not seen or cited into the claims. Thus generally speaking, the term "can be" or "can" in current claim language is considered as a relative term which renders the claim indefinite.

For the art rejection, the applicant did not agree with the last Office action and argued that the cited reference by Grant et al. (U.S. Patent 5,218,602) does not disclose generally "the arbitration logic coupled to receive an indication from a particular target node for the particular transfer as to whether the particular transfer can be supported in the particular target node". This disagreed limitation or argument is boardly seen or generally cited in pages 2-6 for claims 1, 18, and 31, and its sub-dependent claims by the applicant. In response to the applicant's arguemnt, the examiner respectfully submits that the cited reference by Grant et al. is disclosed by either expressively, inherently, or logically the limitation "the arbitration logic coupled to receive an indication from a particular target node for the particular transfer as to whether the particular transfer can be supported in the particular target node". The examiner respectfully takes the applicant to Figures 3-5 and particularly pararaphs in col. 2 lines 10-20, col. 10 lines 15-52, and finally col. 13 lines 12-20. As previously stated, the prior art invention is capable of completing communication transfer or dropping communication transfer (e.g. col. 1 lines 35-52) depending on the flag indication (e.g. equivalent to the "indication signal" from the target node). The connection control at the interconnection control (CC) decides whether to continue setup the communication connection or tear-down the communication connection for service depending on the flag indication (e.g. L2 flag). Thus, the examiner strongly believes the cited reference by Grant et al. generally discloses "the arbitration logic coupled to receive an indication from a particular target node for the particular transfer as to whether the particular transfer can be supported in the particular target node".